Office-Supreme Court, U.S.
FILED
FEB 16 1966
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 915

W. E. GRACE MANUFACTURING COMPANY AND WILLIAM E. GRACE

Petitioners

vs.

BROS INCORPORATED

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CARLSEN, CARLSEN & STURM
1128 Plymouth Building
Minneapolis, Minnesota 55402
Attorneys for Respondent

Hayward-Court Brief Prtg. Co., Mpls., Minn. 55415

INDEX

PAGE

Foreword 1

Counterstatement of the case 3

Arguments 7

The petition fails to make out a case for review by certiorari 7

The first question presented 8

The additional question collaterally presented .. 11

Conclusion 14

Certificate of service 15

Index to Appendix 17

Appendix B 19

AUTHORITIES

Cases:

Bros Inc. v. W. E. Grace, 320 F.2d 594, at 600 12

Bros Inc. v. W. E. Grace Mfg. Co., 261 F.2d 428 .. 3

Bros Inc. v. W. E. Grace Mfg. Co. et al., 140 USPQ 324 6

Calmar, Inc. v. Cook Chemical Co., No. 37, O.T. 1965 6

Gibson-Stewart v. Bros, 264 F.2d 776, at 780 9

Gibson-Stewart Co., Inc. v. William Bros Boiler & Mfg. Co., 264 F.2d 776, c.d. 360 U.S. 929, 79 S. Ct. 1448, 3 L.Ed.2d 1544 3

Graham v. John Deere Co., John Deere Co. v. Graham, No. 11, O.T. 1965 6

Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 54 S.Ct. 146 12

Namet v. United States, 373 U.S. 179, 83 S.Ct. 1151 . 7

Shawkee Mfg. Co. v. Hartford-Empire Co., 322 U.S. 271 13
United States v. Adams, No. 55, O.T. 1965 6
Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 86 S.Ct. 347 13
William Bros Boiler & Mfg. Co. v. Gibson-Stewart Co., Inc., 116 USPQ 138 3
Wm. Bros Boiler & Mfg. Co. v. Gibson-Stewart, 312 F.2d 385 3

Text:

Restatement Torts, § 873 13

In the
Supreme Court of the United States
OCTOBER TERM, 1965

No. 915

W. E. GRACE MANUFACTURING COMPANY AND WILLIAM E. GRACE

Petitioners

VS.

BROS INCORPORATED

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

FOREWORD

Respondent opposes the present Petition for Writ of Certiorari for the reasons that the background facts stated therein are deceptively incomplete, and because the "*Questions Presented*" as expressed in the petition (p. 3) do not state or reflect issues over which this Court should take jurisdiction to review.

Respondent admits that there is direct conflict between the decisions (1a and 50a) of the Courts of Appeals for the Fifth and Eighth Circuits on "a vital point of substantive patent law," as noted in the Fifth Circuit decision (3a), and on exactly the same basic and critical facts (Pet. pp. 2 and 10).

Respondent also admits that it is requesting rehearing by this Court of its denial of certiorari in the Eighth Circuit case, its Petition for Rehearing having been filed (in No. 255 O. T. 1963) on December 29, 1965.

The foregoing, however, by no means warrants the presumption indulged in by the present petitioners (p. 2) that respondent is "ready for agreement that the present petition should be granted." Quite the contrary. The petition, as here presented, should be dismissed for the simple reason that the aforesaid "vital point of substantive patent law" is *not* whether there "*must*—be a *precise identity* between the publication and the patent claim for 'time-bar' purposes," as stated in the first question presented (p. 3), and which the lower courts have not held to be the case; but rather whether the Fifth Circuit Court of Appeals was right or wrong in holding "as clearly erroneous the decision of the District Judge that the brochure disclosed the invention described in the claims" (16a) because "this critical fact finding was not made in the light of the correct controlling legal principles" (17a).

As for the second or "collateral" question presented by the petition (p. 3) it is entirely irrelevant to any other issue or question that may be found to exist, and is therefore completely out of order, as will presently be pointed out.

Inasmuch as Bros Inc. is the plaintiff-respondent in this case, and is defendant-petitioner in the Eighth Circuit case, it will, to avoid confusion, be sometimes referred to herein as the Patentee, while the corporate and individual defendants-petitioners will be designated the Graces, or the Infringers, as was done in the Fifth Circuit decisions. Petitioners' Appendix pages have been numbered 1a, 2a, etc., while those of the present Appendix are numbered B-1, B-2, etc.

COUNTERSTATEMENT OF THE CASE

The Bros patent (2,610,557) has been litigated in three circuits and has been the subject of no less than eleven reported decisions, the sequential rundown of which is given (2a) in the Fifth Circuit decision of September 14, 1965. Validity was first sustained in the Ohio case;[1] and that decision was affirmed by the Sixth Circuit Court of Appeals in 1959.[2] Following an accounting the Sixth Circuit rendered a decision on that subject in 1963.[3]

As the Graces had openly defended the Ohio case they were sued in Dallas, Texas, and under *res judicata* were held bound by the Sixth Circuit Judgment, that holding being confirmed by the Fifth Circuit Court of Appeals[4] in 1958.

Meanwhile, two other noticed Texas infringers, Browning Mfg. Co. and Shovel Supply Co., joined forces, and not wanting to wait until they would be named defendants in a Fifth or Sixth Circuit Court, filed a declaratory judgment action against the Patentee in Minnesota. After a lengthy trial and extensive briefing the trial judge, the Honorable Gunnar H. Nordbye, rendered a decision (58a) in which he agreed with the Sixth Circuit on all questions of invention, anticipation, etc., going so far as to say that he was "without any misgivings as to the validity of the patent" (62a), except only for the defense of the statutory bar that had been raised under 35 U.S.C. Section 102(b) by reason of the Patentee's own publication, a pamphlet

---

[1] *William Bros Boiler & Mfg. Co. v. Gibson-Stewart Co., Inc.*, 116 USPQ 138.

[2] *Gibson-Stewart Co., Inc. v. William Bros Boiler & Mfg. Co.*, 264 F.2d 776, c.d. 360 U.S. 929, 79 S.Ct. 1448, 3 L.Ed.2d 1544.

[3] *Wm. Bros Boiler & Mfg. Co. v. Gibson-Stewart*, 312 F.2d 385.

[4] *Bros Inc. v. W. E. Grace Mfg. Co.*, 261 F.2d 428.

which had been printed and distributed more than one year prior to the filing date of the patent in suit. As to it he concluded (B-1) that:

> "as the invention of the patent was described in such pamphlet, said patent, with respect to each of the four claims therein, is invalid under the provisions of 35 U. S. Code § 102(b)."

The quoted language is important because it pinpoints the only defense that has ever been sustained against the Bros patent, and because it initiated the chain of events that have brought about the present conflict of decisions.

Thus, and within a month after Judge Nordbye's decision (58a) the Graces moved (B-2) to reopen the Texas case:

> "for the purpose of granting a partial new trial devoted to the issue of statutory invalidity of the patent in suit by reason of prior description in a printed publication, contrary to the conditions prescribed by 35 U.S.C. 102(b)."

noting further, that:

> "Judge Nordbye's finding of invalidity was based specifically and solely on the particular issue for which a partial new trial is sought by the present motion."

The Graces' Motion was denied by the Dallas District Court on April 17, 1962, whereupon an appeal was taken to the Fifth Circuit Court of Appeals, the appeal notice (B-3) again precisely stating that it was:

> "for the purpose of granting a partial new trial devoted to the issue of statutory invalidity of the patent in suit by reason of prior description in a printed publication, contrary to the conditions prescribed by 35 U.S.C. 102(b)."

In the Minnesota case, and upon the entering of judgment on June 12, 1962, the Patentee filed its Notice of Appeal and a Statement of Points (B-4) in which it asserted that the District Judge erred:

> 1. in its understanding of the patent claims in suit and in not construing them in the light of the Patent Office proceedings,
>
> 2. in holding that inventive concept of the claims is fully disclosed in the Bros pamphlet, and
>
> 3. in its interpretation of 35 U.S.C. #102(b) under which its conclusion as to invalidity was reached.

Although the Eighth Circuit affirmed the District Judge it will be noted that the aforesaid assigned errors present the three basic elements of the only issue involved in the conflict of decisions, not only as adopted and reiterated by the various infringers, but also as restated in the Patentee's currently pending Petition for Rehearing (in No. 255 O. T. 1963) wherein it will be found (p. 6) that the question there presented in simple or condensed form is:

> "Is the invention of the Bros patent in suit described in the Bros pamphlet, which was distributed more than one year prior to the filing date of the application for the patent, so as to constitute a statutory bar to the validity of the patent under 35 U.S.C. 102(b)?"

Returning to the present case it will be found that notwithstanding the Eighth Circuit's decision (50a) of May 27, 1963, affirming invalidity, the Fifth Circuit, by its decision (22a) of July 3, 1963, remanded the Texas case for a partial new trial "to permit hearing and determination of this limited matter," namely, "the substantive legal significance" of the Bros brochure (43a-45a). On this sole

issue the District Judge, adopting much of the reasoning of Judge Nordbye, also held the patent invalid, by the decision of January 10, 1964,[5] but that decision was reversed on September 14, 1965, by the Fifth Circuit decision (1a) which gave rise to the present Petition for Writ of Certiorari.

Thus, it is quite apparent that the Fifth Circuit Court of Appeals not only recognized the precise nature and scope of the issue, which it anticipated the Supreme Court would review (3a), but also and even earlier highlighted the issue by making it clear (43a) that it is:

> "not, therefore, the more routine case in which validity or invalidity turns on intricate evidentiary questions of prior art, anticipation, lack of invention, novelty or the like."

For the same reasons it follows that a defense under Sec. 102(b) is similarly distinguishable from the cases[6] which the Supreme Court currently has under consideration in which patentability depends on degree of *inventiveness* over the *prior art* or *obviousness, at the time the invention was made,* all being considerations directly involved under Sec. 103, but not at all under Sec. 102(b).

---

[5]*Bros Inc. v. W. E. Grace Mfg. Co. et al.*, 140 USPQ 324.

[6]*Graham v. John Deere Co., John Deere Co. v. Graham*, No. 11, O.T. 1965, *Calmar, Inc. v. Cook Chemical Co.*, No. 37, O.T. 1965, and *United States v. Adams*, No. 55, O.T. 1965.

ARGUMENTS

The petition fails to make out a case for review by certiorari

The Infringers' petition rests on the answers to two carefully worded academic questions (p. 3) neither of which presents an issue on which the Fifth and Eighth Circuits are in conflict. On this point reference is made to the following argument found on pages 8-9 of the respondents' brief opposing certiorari in the related Eighth Circuit case (No. 255 O. T. 1963).

> "Furthermore, it is clear that granting certiorari is not warranted just by reason of the fact that two different circuit courts have reached different results as to the validity of the same patent. See *Aeronautical Communications Equipment, Inc. v. Pierce*, 371 U.S. 954 (1963), denying certiorari. In that case, the Fifth Circuit had held Pat. Nos. 2,133,642 and 2,133,646 valid, and certiorari was denied, although the First Circuit had held Pat. No. 2,133,642 invalid on three occasions; the Third Circuit had held Patent No. 2,133,642 invalid; the First Circuit had held Pat. No. 2,133,646 invalid; the Petitioner sought certiorari on the grounds of conflict; and respondent admitted the conflict." (Footnote references here omitted.)

The Petitioners have not complied with the Rules of this Court, particularly subdivisions 1(c) and 4 of Rule 23, and not having accurately or clearly presented the issue in conflict, as herein brought out, this Court is under no obligation to revise, interpret or otherwise pass on the petition.[7]

---

[7] *Namet v. United States*, 373 U.S. 179, 83 S.Ct. 1151.

The first question presented

After considering the documented background of facts as given in the foregoing Counterstatement, it should be evident that the main question as phrased by the Infringers (p. 3), as well as the Arguments that follow (pp. 10-13), evade or conceal rather than define and present the point of conflict.

Before the Fifth Circuit felt able to determine whether or not *the invention* of the Bros patent was disclosed in the Bros brochure, it first posed the logical elementary inquiry (9a):

> "What is the invention?—not merely as to the device, but what is it the law regards as *the invention*?"

It then notes the mandatory statutory requirement (35 U. S.C.A. § 112) for "claims—distinctly claiming the subject matter which applicant regards as his invention," further concluding that:

> "we, and all other courts have often held that it is the claim of a patent that measures the invention, etc."

and

> "This means every element of each patent claim is deemed to be material to the inventive concept."

The Court then proceeded to consider the disclosure of the brochure in great detail, to analyze the claims one by one, phrase by phrase, word by word, and to point out numerous positive and critical claim limitations that simply cannot be found in the pamphlet. Had the Eighth Circuit made the same intensive study and analysis it is doubtful

that there would ever have been any conflict between courts. Even the Sixth Circuit Court of Appeals, in its decision,[8] stated that:

> "Upon careful analysis, the claims of the patent in suit seem to present a distinctive inventive concept which had no equivalency in the prior art."

and it then made an extremely accurate resume of the claim language.

In spite of the foregoing, we now learn from the present petition (p. 11) that:

> "The Fifth Circuit made a shibboleth of the patent claims—and very literally so."

and to do so for:

> "time-bar purposes as the Fifth Circuit has done, is to grant claim language a mystical significance that has no warrant, etc."

The argument then continues with the still more amazing contentions (p. 12) that:

> "the invention and the grant are not necessarily the same"

that:

> "For time-bar purposes, it has always been the inventive substance and not the claim that governs."

and that the Fifth Circuit was *wrong* in its basic position:

> "that the claim limitation details must, as a matter of law, be taken to define the inventive substance."

---

[8]*Gibson-Stewart v. Bros*, 264 F.2d 776, at 780.

It is impossible to equate petitioners' position, as thus exposed, either with the query contained in its primary question (p. 3), or with basic tenets of patent law.

Another elementary rule of patent law (17a) carefully applied by the Fifth Circuit Court of Appeals, but virtually ignored in the present petition, as it was in the Eighth Circuit courts, is that "the Patent Office history is relevant if questions arise as to scope or interpretation of claims" (9a-10a), particularly where, as here, it is abundantly established that during the Patent Office prosecution the claims were imposed with limitations that described the very structural features and characteristics that are not disclosed in the brochure (13a). This being true the Court was:

> "left with the certain conviction that this patent (as it) comes to us—is not disclosed by the brochure which leaves so many elements of the claims unrevealed." (Authorities.)

and consequently the District Court was reversed because (17a):

> "this critical fact finding was not made in the light of the correct controlling legal principles." (Authorities.)

Here there is little if any real need to refer to the Patent Office proceedings because the claims are clear and distinct, and should need no "interpretation." The Patent Office record is important, however, because it established the specific fact that the claims were not allowed until they included the very limitations that distinguish them from the disclosure of the pamphlet. In spite of the criticalness of this fact petitioners characterize the distinctions as "in-

nocuous claim limitations" and refer to the Eighth Circuit decision (50a) as having "said that these limitations are of no consequence" (p. 13). We do not find where that decision so holds, or that it discusses any of the critical claim limitations at all. In any event, and if this is a point of decisional conflict between the Fifth and Eighth Circuits, it has not been put in issue as a question to be resolved in this case under the present petition.

The additional question collaterally presented

Petitioners' second question (p. 3) can only be construed as an attempt to elicit judicial sympathy by attacking the character of one of the Patentee's witnesses who had made an affidavit containing a statement that was subsequently found to be incorrect but which, when made, was conscientiously believed to be true, and was promptly corrected when the error was discovered. Under these circumstances this Court is being requested to sanction a right to counterclaim for damages by the Petitioners, and presumably without regard to whatever disposition is made of the issue raised by the first question presented.

This request should be summarily rejected and for a number of reasons, only a few of which need be stated, as follows:

When Judge Nordbye held, as he did by his decision (58a) of February 21, 1962, that the Bros pamphlet was distributed more than one year prior to the Bros application filing date, it was a finding of fact that the Patentee has never challenged since that date, even in the appeal that was taken to the Eighth Circuit Court of Appeals. Nor has the "time" of the publication ever been an issue in the Dallas or Fifth Circuit courts since before the 60(b)

hearing when the Patentee through extensive voluntary investigation was able to determine precisely what the publication date was. The only reason for taking testimony on the question at all was not to determine the date of the publication, but rather to clear the name and reputation of the witness from charges of fraud and concealment that he had been repeatedly subjected to by counsel for the Infringers. Patentee was more than grateful for the opportunity thus given, and the resulting effort fully vindicated the witness because the Fifth Circuit decision of September 14, 1965 (1a) concluded that it is "Expunging now the aspersions of purposeful misconduct" because "we do not think it (the Affidavit) shows a deliberate evil purpose to misstate or conceal or thereafter engage in foot-dragging lest the truth might be uncovered." (6a).

Another reason why the second question should not be considered is that if the conduct or sworn statements of the Patentee are to be investigated then surely the conduct and sworn statements of the Petitioners should also be examined,[9] and if that is done it will be found that Petitioners' conduct in this litigation alone has been far from exemplary. This was recognized by the Fifth Circuit in its decision[10] of July 3, 1963, when it said:

> "Except for the relative minor dispute concerning the time for commencement of damages, the Patentee sustained all of its contentions. Nothing the Patentee did either precipitated the necessity for the reference, nor did it prolong it. Indeed, as between the two the criticism on that score if any is made should more properly be directed at the Infringer whose inaccurate,

---

[9]*Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 54 S.Ct. 146.

[10]*Bros Inc. v. W. E. Grace*, 320 F.2d 594, at 600.

inadequate, incomplete or nonproduced records brought about so much of the confusion."

Petitioners attempt finally (p. 14) to justify their charge of misconduct of Patentee, by reliance on three authorities, namely, (1) *Restatement Torts,* § 873; (2) *Shawkee Mfg. Co. v. Hartford-Empire Co.,* 322 U.S. 271; and (3) *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.,* 86 S.Ct. 347.

The quotation from the *Restatement* is immediately ruled out because it requires *inter alia* that an incorrect or untrue statement be made "with knowledge of its falsity," a prerequisite that has not and cannot here be established against Patentee or its witness.

The *Shawkee* decision was one in which this Court recalled an earlier mandate and remanded the case for further proceedings because of direct and positive proof of a "fraudulent conspiracy" including "fraud" in obtaining the patent as well as "fraud" in obtaining a judgment. There is clearly no analogy with the present situation.

In the recent (Dec. 1965) *Walker Process* case the only question before the Court was "whether the maintenance and enforcement of a patent (undeniably) obtained by (intentional) fraud on the Patent Office may be the basis of an action under § 2 of the Sherman Act." The distinction is equally plain. Here there is not only no evidence at all of "fraud," in or out of the Patent Office, but not once has the issue been raised since the evidence was produced at the 60(b) hearing.

CONCLUSION

The Petition for Writ of Certiorari should be denied because it merely presents academic questions that do not define or bring up for consideration any real issues in conflict between the Fifth and Eighth Circuit Courts of Appeal.

Respectfully submitted,

ANDREW E. CARLSEN
1128 Plymouth Building
Minneapolis, Minnesota 55402
Attorney for Respondent

CERTIFICATE OF SERVICE

Four copies of the foregoing *Respondent's Brief in Opposition to Petition for Writ of Certiorari* have been served on petitioners by airmailing the same, postage prepaid, to petitioners' attorney, Mr. Channing L. Richards, 303 Attorneys Building, Charlotte, North Carolina, 28202, this 11 day of February 1966.

ANDREW E. CARLSEN.

INDEX TO APPENDIX

Conclusions of law by Judge Gunnar H. Nordbye dated March 20, 1962 (Minnesota case) B-1
Motion by defendants (the Graces) to reopen Dallas case (portion) B-2
Defendants' Notice of Appeal (Dallas case) B-3
Statement of Points by Patentee in Minnesota case appeal B-4

APPENDIX B-1

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter involved herein and of the parties hereto under the Patent Laws of the United States.

2. The Bros pamphlet, Exhibit D-4, was a printed publication distributed by the defendant more than one year prior to the filing on November 17, 1949, of the application which issued into the Bros patent No. 2,610,557, on September 16, 1952, and as the invention of the patent was described in such pamphlet, said patent, with respect to each of the four claims therein, is invalid under the provisions of 35 U. S. Code § 102(b).

3. Defendant's Counterclaim is dismissed.

4. Plaintiffs are entitled to appropriate judgment.

5. A thirty day stay may be entered herein.

6. IT IS SO ORDERED.

An exception is reserved.

Dated this 20th day of March, 1962.

By the Court:

/s/ GUNNAR H. NORDBYE,
Judge.

APPENDIX B-2

IN THE UNITED STATES DISTRICT COURT

Northern District of Texas
Dallas Division

Civil Action No. 7608

Bros Incorporated,

Plaintiff,

vs.

W. E. Grace Manufacturing Company, and William E. Grace,

Defendants.

Motion by Defendants Under Rule 59

NOW COME the defendants in the above entitled cause and respectfully move this Court, in accordance with the provisions of Rule 59 of the Federal Rules of Civil Procedure, to alter or amend the Final Judgment entered herein on March 9, 1962, or, in the alternative, to open or suspend the same, with leave for application to the Court of Appeals to authorize reopening of the Interlocutory Judgment heretofore entered on February 17, 1958, for the purpose of granting a partial new trial devoted to the issue of statutory invalidity of the patent in suit by reason of prior description in a printed publication, contrary to the conditions prescribed by 35 U.S.C. 102(b).

This motion is presently brought because the patent here in suit has now been found invalid by a Memorandum De-

cision of Judge Gunnar H. Nordbye, dated February 21, 1962, in *Browning Mfg. Co. and Shovel Supply Co. v. Bros, Inc.*, Civil Action No. 4-59 Civ. 92, pending at Minneapolis in the United States District Court for the District of Minnesota. Judge Nordbye's finding of invalidity was based specifically and solely on the particular issue for which a partial new trial is sought by the present motion; namely, that the patent in suit is invalid for having been described in a prior printed publication, as appears from the certified copy of the aforesaid Memorandum Decision that is appended. * * *

The undersigned attorney for defendants hereby certifies that this motion is presented in good faith, that it is not interposed for purposes of delay, and that in his judgment it is well founded.

Respectfully,

/s/ CHANNING L. RICHARDS,
303 Attorneys Building,
Charlotte 2, North Carolina,
Attorney for Defendants.

APPENDIX B-3

IN THE UNITED STATES DISTRICT COURT

Northern District of Texas
Dallas Division

Civil Action No. 7608

Bros Incorporated, Plaintiff,

vs.

W. E. Grace Manufacturing Company, and William E. Grace, Defendants.

Defendants' Notice of Appeal

Notice is hereby given that defendants W. E. Grace Manufacturing Company and William E. Grace appeal to the United States Court of Appeals for the Fifth Circuit from the Order entered in the above entitled cause on April 17, 1962, denying the Motion by Defendants under Rule 59; and hereby petition the aforesaid Court of Appeals to suspend the Final Judgment entered herein on March 9, 1962, and to authorize reopening of the Interlocutory Judgment heretofore entered on February 17, 1958, for the purpose of granting a partial new trial devoted to the issue of statutory invalidity of the patent in suit by reason of prior description in a printed publication, contrary to the conditions prescribed by 35 U.S.C. 102(b).

/s/ CHANNING L. RICHARDS,
303 Attorneys Building,
Charlotte 2, North Carolina,
Attorney for Defendants.

APPENDIX B-4

IN THE UNITED STATES DISTRICT COURT

Northern District of Texas
Dallas Division

Civil Action No. 7608

Bros Incorporated,

Plaintiff,

vs.

W. E. Grace Manufacturing Company, and William E. Grace,

Defendants.

Statement of Points

The defendant-appellant, Bros Incorporated, makes the following statement of points on which it will rely on this appeal.

1. The District Court erred in its understanding of the subjects-matter of the claims of the patent in suit and in not construing those claims in the light of the Patent Office proceedings resulting in the allowance of such claims.

2. The Court erred in its substitute Finding of Fact No. 21 in holding that the inventive concept of the patent claims in suit is fully disclosed in the Bros pamphlet, Defendant's Exhibit D-4.

3. The Court erred in its interpretation of Section #102(b) of 35 U. S. Code and in its Conclusion of Law

#2 that each of the four claims of the patent in suit are invalid under the provisions of said Section.

CARLSEN, CARLSEN & STURM,
By /s/ ANDREW E. CARLSEN,
417 Plymouth Building,
Minneapolis 2, Minnesota,
Attorneys for Defendant.